IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12676 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGWATIPRASAD MAGANLAL BAROT - Petitioner(s)

Versus

DIVISIONAL CONTROLLER G.S.R.T.C. - Respondent(s)

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Appearance :

MR BHARAT JANI for Petitioner No(s).: 1.
None for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 01/07/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner workman has challenged the legality and validity of the judgment and award passed by the Labour Court, Vadodara dated 19th January, 2005 passed in Reference Case No.1591 of 1999, by

which, the labour court has dismissed the reference confirming the order of dismissal passed by the disciplinary authority dated 31st March, 1998.

2. The petitioner was serving as the Driver with the respondent Corporation and on 19.6.1996 when he was driving the bus on the route Nathdwara to Dwarka, the bus was checked by the police at Shamlaji check post and six bottles of alcohol were found in his cabin. A criminal case was filed against him and he was arrested and thereafter released on bail. Chargesheet was issued against him on 20th October, 1996 and departmental inquiry was held against him. After holding the departmental inquiry and after giving an opportunity to the petitioner, by order dated 31st March, 1998 the disciplinary authority dismissed the petitioner from service after charges were proved against him. Being aggrieved and dissatisfied with the same, the petitioner raised industrial dispute which was referred to the Labour Court, Vadodara for its adjudication which was numbered as Reference Case No.1591 of 1999. It appears that during pendency of the aforesaid reference, the petitioner came to be tried by the criminal court and he was acquitted by relying upon the judgment of this Court reported in 1991 (1) GLR 433. It was contended on behalf of the petitioner before the Labour Court that in view of the acquittal by the criminal court, the order passed by the

disciplinary authority dismissing the petitioner from service is required to be quashed and set aside. Alternatively, the petitioner also prayed for the benefit under Section-11-A of the Industrial Disputes Act. Considering the evidence on record and the judgment of the criminal court by which the petitioner was acquitted and considering serious charges leveled against the petitioner, the Labour Court, Vadodara by its judgment and award dated 19th January, 2005 dismissed the reference and even did not think it fit to exercise the discretionary powers under Section-11-A of the I.D.Act. Being aggrieved and dissatisfied with the same the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri B.G.Jani, learned advocate appearing on behalf of the petitioner has vehemently submitted that in view of the acquittal of the petitioner by the criminal court, the Labour Court ought to have set aside the order passed by the disciplinary authority dismissing the petitioner from service and/or ought to have exercised the discretion under Section-11-A of the I.D.Act. Relying on the judgment of the Hon'ble Supreme Court of India in case of CAPT. M. PAUL ANTHONY V. BHARAT GOLD MINES LTD AND ANOTHER reported in AIR 1999 SC

1416 and the judgment of the Division Bench of this Court in case of UNION OF INDIA V. M.B.R.PATEL reported in 2004 (6) GHJ 543 it is submitted that once on the same set of facts the departmental inquiry is initiated and the criminal prosecution is launched and there is order of acquittal passed by the Criminal Court, the Labour Court is required to consider the same i.e the order passed by the criminal court acquitting the employee and an order is required to be passed accordingly. Therefore, it is submitted that when in the present case, the petitioner is acquitted by the criminal court and on the same set of facts, the departmental inquiry is initiated then, the Labour Court was required to consider the judgment of the criminal court and was required to consider the order passed by the disciplinary authority accordingly and at least ought to have exercised the discretion under Section-11-A of the I.D.Act and ought to have interfered with the order of punishment / penalty imposed by the disciplinary authority of dismissing the petitioner from service. It is also submitted that the labour court has not properly appreciated and considered the defence on the part of the petitioner and that has resulted into miscarriage of justice and therefore, it is requested to allow the present Special Civil Application.

4. It is required to be noted that there is an admission on the

part of the petitioner driver that on raid being conducted, six bottles of liquor were found from his cabin. It is also required to be noted that the petitioner was chargesheeted by the disciplinary authority and the disciplinary inquiry was initiated against him. The petitioner was directed to submit written explanation and to produce witnesses in his defence. However, the petitioner did not file any written explanation or reply to the chargesheet. The report was examined during the course of departmental inquiry and reporter supported the case that on 19.6.1996 the bus on which the petitioner was on duty came to be checked by police and six liquor bottles were found from his cabin and for that he was arrested by the police. The Reporter was examined in the presence of the petitioner but the petitioner did not challenge the statement of the Reporter by way of cross examination and it appears that he had refused to cross examine the Reporter. It is only when the second show cause notice was served upon the petitioner, he had replied to the said show cause notice and given his explanation. Considering the statement of the reporter, conductor and the defence of the petitioner, and the evidence on record, so also, considering the judgment of the criminal court by which the petitioner was acquitted, the Labour Court came to the conclusion that the charges are proved against the petitioner in departmental inquiry and that considering the serious charge against the

petitioner, the petitioner is not entitled to the discretionary order under Section-11-A of the I.D.Act and accordingly, dismissed reference.

5. So far as reliance placed upon the judgment of the Hon'ble Supreme Court of India as well as the Division Bench of this Court referred to hereinabove are concerned, there is no dispute with regard to proposition of law laid down in the aforesaid two judgments. However, the same are not applicable in the facts of the present case. In the present case, there is already admission on the part of the petitioner driver that six bottles were found from his cabin. However, his defence was that it was not placed by him, has been negative by the Inquiry Officer as well as the Labour Court. I have gone through the judgment of the criminal court acquitting the petitioner and the criminal court acquitted the petitioner on technical ground relying upon the judgment of this Court reported in 1991 (1) GLR 433. So far as the judgments relied upon by the petitioner is concerned, there was specific finding given by the criminal court on merits and the facts of those cases, it was held that on the same set of facts, if any employee is acquitted by the criminal court, the labour court / Industrial Court is required to consider the same. Under the circumstances, the aforesaid two judgments are not of any assistance to the case of the petitioner. It is required to be noted that standard of proof in criminal trial as well as the departmental inquiry

proceeding are different. Even considering the judgment of the criminal court as well as the charge proved against the petitioner, i.e. Having six bottles of alcohol in the cabin of the petitioner driver, even the labuor court has though it fit not to exercise the discretion vested under Section-11-A of the I.D.Act. Possessing and / or having alcohol, that too, in the cabin of the driver in the Gujarat State where prohibition is in force amounts to serious misconduct. As such, no illegality has been committed by the labour court in dismissing the reference.

6. Under the circumstances, no interference is required of this Court and hence, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed at the threshold.

[M.R.Shah, J.]

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